
COVID-19 (TEMPORARY MEASURES) ACT 2020: AN UPDATE

Please contact the following lawyers if you have questions about the contents of this legal update:

Azmul Haque
Director
+65 6950 2875 (ext. 2001)
azmul.haque@collyerlaw.com

Anita Ahamad
Associate
+65 6950 2875 (ext. 2005)
anita.ahamad@collyerlaw.com

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INTRODUCTION

The COVID-19 pandemic, described by the Government of Singapore as a generational crisis of unprecedented scale, has already had a crippling effect on the global economy. Singapore, which is reliant on an open and trade-dependent economy is already witnessing adverse effects of the crisis. Travel restrictions, supply chain disruptions, manpower shortages and increased commodity prices has left no industry unscathed.

The Singapore Parliament has expeditiously passed the COVID-19 (Temporary Measures) Act (the “**Act**”) on 7 April 2020 and the Act has taken effect the same day.

This article looks at salient provisions of the Act and provides our analysis on its considerable impact on the enforcement of certain contracts and commercial disputes in Singapore for the next 6 to 12 months.

KEY TAKEAWAYS

- Temporary relief from the inability to fulfil contractual obligations under certain contracts if that inability is materially caused by a COVID-19 event.
- Temporary changes to bankruptcy and insolvency laws to increase the debt thresholds for winding up and bankruptcy.
- To regulate the conduct of certain meetings including Annual General Meetings by providing for remote attendance.

These temporary measures are intended to last for **six (6) months** from the commencement of the Act (the “**Prescribed Period**”). The Act empowers the Government however to either *extend or shorten* this

period, provided that the total duration of temporary relief does not exceed one (1) year.

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(A) TEMPORARY RELIEF FOR CONTRACTUAL PERFORMANCE

The temporary measures applicable to certain contracts **prohibit, *inter alia*, enforcement actions to be taken against a party to a contract** and/or their guarantors if the **inability of the party to perform such contracts is to a material extent, caused by COVID-19**. This refers to the pandemic itself and other government-related control measures issued in connection with the pandemic.

It should be noted that the relief merely **suspends the parties' contractual obligations** for the Prescribed Period. The Act does not extinguish or release parties from performance of their obligations.

APPLICABLE CONTRACTS

The temporary relief will apply only to the following specified list of Scheduled Contracts under the Act¹ (the "**Scheduled Contracts**"):

The Act only covers contractual obligations under the **Scheduled Contracts that are to be performed on or after 1 February 2020², where the Scheduled Contract was signed on or before 24 March 2020³.**

1. A contract for the grant of a loan facility by a licensed bank or

¹ As set out in the Schedule to the Act.

² Section 5(1)(a) of the Act.

³ Section 4(1) of the Act.

finance company to an enterprise, where the facility is secured against any commercial or industrial immovable property in Singapore.

2. A contract for the grant of a loan facility by a licensed bank or finance company to an enterprise:
 - (i) where such facility is secured against any plant, machinery or fixed asset in Singapore; and
 - (ii) where the plant, machinery or fixed asset is used for manufacturing, production or other business purposes.
3. A performance bond or equivalent granted pursuant to a construction or supply contract.
4. A hire-purchase agreement or conditional sales agreement where the good hired or conditionally sold is any plant, machinery or fixed asset used for manufacturing, production or other business purposes, or is a commercial vehicle.
5. An event contract⁴.

⁴ This is defined in the Act as a contract for the provision of a venue, accommodation, amenities, transport, entertainment, catering or other goods or services for events such as business meetings, incentive travel, conferences, exhibition, sales events, concerts, shows, wedding parties, sporting events or other social gatherings or for the event's participants, attendees or guests.

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6. A tourism related contract⁵.
 7. A construction contract or a supply contract.
 8. A lease or license of non-residential immovable property.
3. Initiating bankruptcy or insolvency action against the party, guarantor or surety.
 4. Repossessing goods under a lease, hire-purchase or retention of title agreement.
 5. Terminating a lease or license of immovable property for non-payment of rent or money.
 6. Any action to enforce a court judgement, arbitral award or adjudication determination under the Security of Payment Act.

PROCEDURE

A party to a Scheduled Contract is required to issue a notification for relief on all counterparties to the contract, including any guarantors or sureties.

Upon receipt of such notification, the counterparty will be prohibited from taking certain actions. The main prohibited actions (the “**Prohibited Actions**”) are set out as follows⁶:

1. Commencing or continuing any court or arbitral proceedings under the Arbitration Act against the party, guarantor or surety.
2. Enforcing any security over any immovable property or over any movable property being used for the purpose of trade, business or profession.

There are heavy penalties for taking the Prohibited Actions – persons found in contravention will be found **guilty of an offence and liable on conviction of a fine not exceeding S\$1,000**⁷.

Importantly, it should be noted that **any Prohibited Actions taken will be rendered void of any legal effect**. Proceedings started in contravention will be dismissed⁸ and enforcement of security rendered invalid except as against a bona fide purchaser for value without notice of the notification for relief⁹.

⁵ This is defined in the Act as a contract for the international carriage of passengers by sea or land; a contract for the provision of tourism-related goods or services such as transport, entertainment or short-term accommodation; or a contract for the promotion of tourism in Singapore (or for the distribution for the trade or retail of products related to such tourism).

⁶ Sections 5(3) and 6(2) of the Act.

⁷ Section 8(1) of the Act.

⁸ Section 8(2) of the Act.

⁹ Section 8(3) of the Act.

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KEY ADDITIONAL TEMPORARY RELIEF FOR CERTAIN CONTRACTS

CONSTRUCTION & SUPPLY CONTRACTS:

- For purposes of assessing liquidated or other damages payable, the calculation of any delay period will exclude such periods of time during the Prescribed Period where the non-performing party's performance was to a material extent, caused by COVID-19¹⁰.
- In an action for breach of contract, inability to perform or fulfil contractual obligations is a statutory defence¹¹.

EVENT & TOURISM-RELATED CONTRACTS:

- Unless determined otherwise by an assessor (through the Dispute Mechanism process below), all non-refundable deposits must be returned once a notification for relief has been served¹².
- No cancellation fees are payable if it can be shown that the inability to perform the

contract was to a material extent, caused by COVID-19¹³.

DISPUTE RESOLUTION

A counterparty seeking to contest a notification for relief is entitled to apply to the Registrar of Assessors appointed by the Ministry of Law to determine whether the matter falls within the scope of the Act¹⁴. During such assessment, certain factors such as the non-performing party's ability and financial capacity to perform the contract will be taken into consideration¹⁵. These assessors are directed to seek to achieve an outcome that is joint and equitable in the circumstances of the case¹⁶.

If the matter falls within the scope of the Act, the **assessor has wide-ranging power to compel parties' performance to the contract** or make further determinations for a just and equitable outcome.

These include requiring the contracting party to do anything or pay any sum of money to discharge any obligations. In the case of a lease or license of immovable property where the right of re-entry or forfeiture has been exercised, the assessor can require

¹⁰ Section 6(5) of the Act.

¹¹ Section 6(6) of the Act.

¹² Section 7(2) of the Act.

¹³ Section 7(3) of the Act.

¹⁴ The process of assessment will be covered by subsequent secondary regulations.

¹⁵ Section 13(2) of the Act.

¹⁶ Section 13(2) of the Act.

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him to give possession of such property to the other party¹⁷.

Given that the dispute resolution process is temporary and intended to be as efficient as possible, parties will **not be allowed to engage or be represented by lawyers** for proceedings before an assessor¹⁸ and **must bear their own costs** for such proceedings¹⁹. In addition, the assessor's determination will be binding on parties and their decisions will be final and non-appealable.

POINTS TO NOTE

- *No automatic inclusion*

The Act is drafted to impose an active obligation on the party seeking to rely on relief to serve a notification on the counterparty. Until received, the counterparty is at liberty to enforce their rights and obligations under the contract.

- *What amounts to “materially caused by COVID-19”?*

This will likely be the largest source of contention between parties as it is a question of fact to be determined on a case to case basis. **There is presently no statutory definition provided for what is “material”**. To bolster a stronger argument here, it is

suggested that in addition to demonstrating relevance of the pandemic, it must be shown that the **inability to perform the contract is substantially because of the effects of the crisis**.

Prior to sending a notification for relief, a party should as a matter of prudence, have on standby documents or evidence presenting the causal link between the crisis and their non-performance/default if the matter proceeds for determination before an assessor.

- *Frustrated Contracts Act & Force Majeure*

It should be noted that the Frustrated Contracts Act and all force majeure clauses will not be excluded the Act²⁰. **The temporary relief measures under the Act are intended as an additional option alongside standard frustration arguments**. Parties should consider the existing frustration clauses in their contract prior to applying for relief under the Act.

- *International Commercial Arbitration*

The provisions in the Act appear to apply to the Arbitration Act only. International commercial-type arbitrations, which are typically governed by the International

¹⁷ Section 13(3) of the Act.

¹⁸ Section 14 of the Act.

¹⁹ Section 15 of the Act.

²⁰ Section 5(13) of the Act.

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Arbitration Act are not captured under the Act. By inference, actions under these may still be initiated or continued.

(B) BANKRUPTCY & INSOLVENCY PROCEEDINGS

The time period to satisfy or set aside a statutory demand is extended from **twenty-one (21) days to six (6) months**.

FOR INDIVIDUALS²¹:

The monetary threshold for bankruptcy of an individual is increased from **S\$15,000 to S\$60,000**.

The monetary threshold to qualify under the debt repayment scheme is increased from **S\$100,000 to S\$250,000**.

FOR BUSINESSES:

The monetary threshold for insolvency of a business is increased from **S\$10,000 to S\$100,000**.

Notwithstanding the above, the Monetary Authority of Singapore (MAS) has stepped forward to clarify that the contractual rights of banks are not affected under the Act²². Specifically, other than the

suspension of rights to commence legal action for default on a loan under the Act, its contractual rights to charge fees and interest for non-payment or late payment of loan obligations remain unaffected.

(C) CONDUCT OF MEETINGS

The Act permits the companies to make alternative arrangements for meetings where personal attendance is required pursuant to written law such as the Company's Act or legal instrument such as a company's Constitution.

These alternative arrangements include:

- Electronic meetings, including voting, tabling of questions and responses.
- Reduction of a quorum to a specified number.
- Provision for electronic voting in person and by proxy.
- Provision for deferment of meeting.

Subsidiary legislation and regulations for these have not been published and is expected to be released in the coming weeks.

(D) CONCLUSION

In a period of market uncertainty, the Act provides well-timed (though temporary)

²¹ Section 20(1) of the Act.

²² Accessible at <https://www.mas.gov.sg/news/media-releases/2020/comments-by-mas-on-covid-19-temporary-measures-bill>

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reprieve for businesses that are impacted by the ripple effects of the crisis and are not able to fulfil their contractual obligations.

It should be noted that, at the end of the prescribed period, those contractual obligations will continue unabated.

Contracting parties should be prepared to start performing those contractual obligations at the end of the prescribed period unless a separate agreement has been made for an alternative arrangement before the end of the prescribed period.